

IN THE UNITED STATES DISTRICT COURT

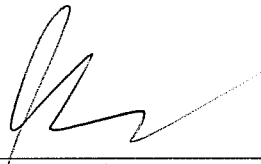
IN AND FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Crim. No.: 07-24-SLR
	)	
CHRISTOPHER M. KRAUSS,	)	
	)	
Defendant.	)	

NOTICE OF MOTION

TO: Douglas McCann, AUSA	Martin Durkin, Pre-Sentence
U.S. Department of Justice	844 King Street
1007 Orange Street, #700	Lock Box 39
P. O. Box 2046	Wilmington, DE 19801
Wilmington, DE 19899	

PLEASE TAKE NOTICE the attached Motion to Stay Sentence of Incarceration Pending Determination of Appeal of Sentence or until May 1, 2008 will be heard by The Honorable Sue L. Robinson at the convenience of Court and counsel.

  
\_\_\_\_\_  
Edmund Daniel Lyons - 0881  
Attorney for Defendant  
1526 Gilpin Avenue  
P. O. Box 579  
Wilmington, Delaware 19899  
(302) 777-5698

Dated: October 30, 2007

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
	)	
v.	)	Crim. No.: 07-24-SLR
	)	
CHRISTOPHER M. KRAUSS,	)	
	)	
Defendant.	)	

MOTION TO STAY SENTENCE OF INCARCERATION PENDING  
DETERMINATION OF APPEAL OF SENTENCE OR UNTIL MAY 1, 2008

Through counsel, the Defendant moves the Court pursuant Fed. R. Crim. P 38(b) for a stay of incarceration imposed herein. Defendant requests a stay pending appellate review of his sentence or until May 1, 2008 to facilitate care for his disabled mother. This Motion is based on the following.

1. On October 23, 2007 Defendant, Christopher Krauss was sentenced on his plea of guilty to a charge of 26 U.S.C. §7206(1) (false statement under oath submitted to Internal Revenue Service in support of an Offer in Compromise).

2. It is uncontested that the Court correctly calculated Krauss' sentence in the Guideline level as a 12 with no prior criminal history which gives rise to a sentence under the United States Sentencing Guidelines of from 10-16 months incarceration.

3. At sentencing, the Government requested that the Court impose a Guideline sentence at the low end that contained five months incarceration to be followed by five months home release subject to certain other terms and conditions.

4. Attached to this Motion is a letter from Hagop L. Der Krikorian, M.D., the neurosurgeon for Eileen Krauss. Dr. Der Krikorian advises that Mrs. Krauss, Defendant's mother, has "cervical cord compression in her spine" and is currently scheduled for an Anterior Cervical Microdiscectomy and Fusion to be performed on December 12, 2007 at St. Francis Hospital. Dr. DerKrikorian estimates that post-operative care will be required for approximately four months or more during Mrs. Krauss' recovery. In a telephone conversation with the undersign's secretary, secretary for Dr. DerKrikorian advises that Mrs. Krauss will be housebound for six weeks following surgery with the exception of being seen by Dr. DerKrikorian two weeks following surgery, and if she is proceeding well, four weeks after that. She will be wearing a cervical collar for the entire first six weeks after surgery. After six weeks, if she is still proceeding well, she will be required to perform physical therapy 3-4 times a week for six weeks. After six weeks of physical therapy x-rays will be performed of her cervical spine to see how she is proceeding.

5. The only person available to provide transportation for post-operative care to Mrs. Krauss, in addition to the assistance Defendant provides his mother with her normal activities of daily living (as further set forth below), is Defendant himself. This

need for additional assistance is the basis for the request for a stay, until May 1, 2008, if the Court does not enter a stay pending appeal.

6. At the time of sentencing, counsel for the Defendant requested that the Court vary from the sentencing Guidelines to a sentence that would not include a period of incarceration but would instead substitute a sentence of home confinement for any period of incarceration, such sentence to be subject to other terms and conditions. The basis for counsel's request for the variance from the Sentencing Guidelines was Defendant's role as the main emotional and supportive caregiver for his 63 year old mother who has been disabled for at least the last 10 years. At sentencing, counsel indicated (this information is also found in the pre-sentence report) Krauss had two brothers and sisters, one of whom did not live close to his mother in southern Delaware and that while the other sibling did live close to his mother (as does Krauss), that other sibling has a physical disability as well that prevents her from participating in her mother's care. Counsel explained that Krauss made some economic contributions to his mother's support but, more importantly, has served as her sole transportation for trips to the doctor, grocery shopping, etc. Counsel further explained that Krauss had returned to Delaware from Pennsylvania sometime ago to perform these services for his mother who has no source of income other than alimony and is physically

unable to transport herself or to otherwise take care of her household.

7. At the time of sentencing, counsel acknowledged the recent Decisions of the Third Circuit in United States v. Tomko, 2007 WL2350765, (3<sup>rd</sup> Cir. 2007) and United States v. Goff, 2007 WL2445637 (3<sup>rd</sup> Cir. 2007). Each of these Opinions was handed down within the last two months by the Third Circuit. It is not necessary for the purposes of this Motion to engage in an extended discussion of Tomko and Goff other than to note that in each case the Government had appealed a Decision outside a Guideline calculated sentence in favor of a sentence more favorable to the Defendant. In each case, the Third Circuit vacated Defendant's sentence and remanded for re-sentencing with directions to the District Court to give greater consideration to, or in so many words, give a greater weight to consideration of the Guideline sentence of incarceration. We believe that despite an expressed disavowal of "a formulaic application of the Proportionality Principal", the Third Circuit in Tomko and Goff in fact endorsed the Proportionality Principal or Rule requiring that the greater a District Court sentence varies from a Guideline calculated sentence the greater the reasons in the Record must be to support such variation.

8. Although this Court, at sentencing, did not comment on the role, if any, Tomko and Goff played in the sentencing decision,

we believe that these Opinions may have played some such role in the denial of Defendant's request for a variance.

9. The validity of the Proportionality Rule in Federal sentencing is currently under consideration by the United States Supreme Court in Gall v. United States, 127 S. Ct. 2933, cert. granted June 11, 2007. In Gall, the question presented is:

"Whether when determining the 'reasonableness' of a District Court sentencing under United States v. Booker, 543 U.S. 220, 2005, it is appropriate to require District Courts to justify a sentence outside the range recommended by the United States Sentencing Guidelines with a finding of extraordinary circumstances?"

10. Gall was heard by the Supreme Court in Argument on October 2, 2007.

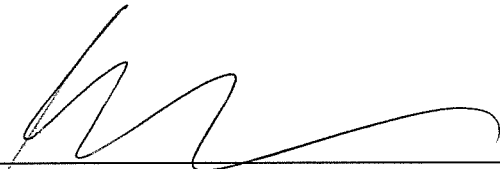
11. Counsel for the Defendant in this case has been advised by counsel for the Defendant in Tomko that the Third Circuit has stayed further proceedings in Tomko, namely, consideration of a Petition to be filed for hearing, or for rehearing en banc pending the Decision of the Supreme Court in Gall v. United States.

12. Because Tomko has not yet been finally decided and because the United States Supreme Court in Gall may give lower Courts further direction regarding the proper interplay between the United States Sentencing Guidelines and other statutory sentencing factors, Defendant in this case intends to file a Notice of Appeal from this Court's sentencing Decision of October 23, 2007. We have not yet filed the Notice of Appeal because we wish to present this

Motion to this Court asking this Court to stay execution of sentence.

13. Defendant has been on pre-trial supervision since charges were initially brought against him on May 14, 2007. Defendant believes he has successfully complied with any and all conditions imposed on him as a result of pre-trial supervision. Therefore, Defendant believes he would not present a danger to the public should he be permitted to remain at liberty pending the appeal of his sentence to the Third Circuit.

WHEREFORE, in light of the foregoing, Defendant requests that this Court enter the attached proposed Order pursuant to Fed.R.Crim.P. 38(b) staying his sentence of imprisonment pending determination of his appeal to the United States Court of Appeals for the Third Circuit of such sentence or May 1, 2008, whichever last occurs.



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Edmund Daniel Lyons - 0881  
The Lyons Law Firm  
1526 Gilpin Avenue  
P. O. Box 579  
Wilmington, Delaware 19899  
(302) 777-5698

Attorney for Defendant

Dated: 10/31/07

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IN AND FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
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v.	)	Crim. No.: 07-24-SLR
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CHRISTOPHER M. KRAUSS,	)	
	)	
Defendant.	)	

ORDER

GOOD CAUSE APPEARING therefore, it is hereby Ordered that Defendant's sentence of imprisonment is hereby stayed pursuant to Fed.R.Crim.P. 38(b) pending his appeal to the United States Court of Appeals for the Third Circuit of such sentence until the earlier of a determination of his appeal or such appeal.

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The Hon. Sue L. Robinson

Dated:



Hagop L. Der Krikorian, M.D.

Neurological Surgery

Riddle Memorial Hospital  
Outpatient Pavillion, Suite 3306  
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October 29, 2007

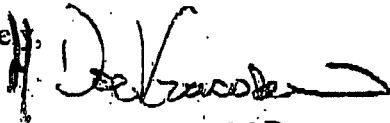
Edmund Daniel Lyons.  
1526 Gilpin Avenue  
P.O. Box 579  
Wilmington, Delaware 19899

Dear Mr. Lyons:

Please be advised that Eileen Krauss has been seen in my office on October 26, 2007, and at that time she has been scheduled for surgery on December 12, 2007 at St. Francis Hospital. Ms Krauss has cervical cord compression at C4-5, C5-6 and C6-7. The procedure that will be preformed is Anterior Cervical Microdiscectomy and Fusion at C4-5 C5-6 and C6-7 with autologous bone graft. Post-operative care is approximately 4 months or more due to the patient's recovery.

Should you have any questions, please do not hesitate to call.

Sincerely,



Hagop L. DerKrikorian, M.D.

EX A

AFFIDAVIT OF MAILING

I, Donna L. Hendricks, secretary for Edmund Daniel Lyons, Esquire hereby certifies that on this 32st day of October, 2007, I caused two (s) copies of the attached: Motion to Stay Sentence of Incarceration Pending Determination of Appeal of Sentence or Until May 1, 2008, to be delivered by first-class mail to:

Douglas McCann, AUSA  
U.S. Department of Justice  
1007 Orange Street, #700  
P. O. Box 2046  
Wilmington, DE 19899

Martin Durkin, Pre-Sentence Officer  
844 King Street  
Lock Box 39  
Wilmington, DE 19801

  
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Donna L. Hendricks